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IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

United States District Court  
Southern District of Texas  
FILED

SEP 05 2003

Michael N. Milby  
Clerk of Court

LUIS ALEJANDRO GARZA,  
Plaintiff,

v.

UNITED STATES OF AMERICA,  
Defendant.

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Civil Action No. B-02-154

UNITED STATES OF AMERICA'S MOTION TO DISMISS  
AND ALTERNATIVE MOTION FOR SUMMARY JUDGEMENT  
PURSUANT TO RULES 12(b)(1) and (6) AND RULE 56(b)  
OF THE FEDERAL RULES OF CIVIL PROCEDURE

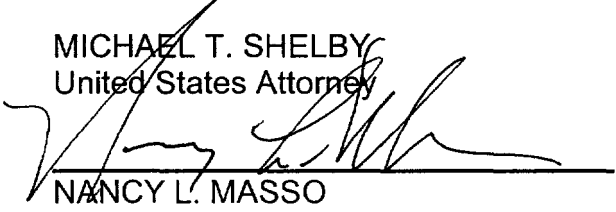
TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, United States of America, moves this Court to dismiss this lawsuit for want of subject matter jurisdiction and failure to state a claim upon which relief can be granted. See FRCP, Rules 12(b)(1) and (6). Alternatively, the United States moves for a summary judgement pursuant to Rule 56(b) of the FRCP. In support of this motion, the United States respectfully refers and incorporates by reference herein its supporting brief and Defendant's Exhibits 1 and 2, which are filed contemporaneously with this motion.

WHEREFORE, PREMISES CONSIDERED, the United States of America, Defendant herein, prays that this Court grant this motion and assess all costs against the Plaintiff herein.

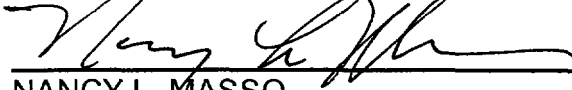
Respectfully submitted,

MICHAEL T. SHELBY  
United States Attorney

  
NANCY L. MASSO  
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Texas State Bar No. 00800490  
Federal I.D. No. 10263

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the true and foregoing "United States of America's Motion to Dismiss and Alternative Motion for Summary Judgement Pursuant to Rules 12(b)(1) and (6) and Rule 56(b) of the Federal Rules of Civil Procedure", was mailed on this the 5<sup>th</sup> day of SEPTEMBER, 2003 via Certified Mail, Return Receipt Requested to Barry R. Benton, Attorney at Law, 284 Ebony Avenue, Brownsville, TX 78520.

A handwritten signature in black ink, appearing to read "Nancy L. Masso", is written over a horizontal line.

NANCY L. MASSO

Assistant United States Attorney